

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF NEW YORK
3 Case No. 23-42634-nhl

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5 In the Matter of:

6

7 PETER JULIAN DEPAOLA,

8

9 | **Debtor.**

11 United States Bankruptcy Court

12 | 271-C Cadman Plaza East

13 Brooklyn, NY 11201

14

15 February 6, 2024

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21 | B E F O R E :

22 HON. NANCY HERSHÉY LORD

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO : UNKNOWN

1 HEARING re [36] Omnibus Motion for 2004 Examination Filed by
2 Michael T Conway on behalf of Thea Francesca D'Adamo

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25 Transcribed by: Rita Weltsch

1 A P P E A R A N C E S :

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14 BY: CHRIS GRAVER

15

16 ALSO PRESENT:

17 LAURA K. SMOKE

18 RON KILGARD

19 GARY A. GOTTO

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1 P R O C E E D I N G S

2 CLERK: The next matter on the calendar in the
3 case of Peter Julian DePaola.

4 THE COURT: Appearances, please.

5 MR. GOLDSTEIN: Good afternoon, Your Honor. Scott
6 Goldstein appearing on behalf of the Debtor-in-Possession,
7 Peter Julian DePaola.

8 MR. SUSSMAN: Good afternoon, Your Honor. Jeremy
9 Sussman on behalf of the United States Trustee.

10 MR. CONWAY: Hello, Mr. Sussman. Good afternoon,
11 Your Honor. Michael Conway, I am appearing on behalf of
12 Thea D'Adamo, the moving party, and with me is my partner,
13 Anna Pia Felix.

14 MR. DICE: Good afternoon, Your Honor. Denis Dice
15 representing PTR, which is a proposed 2004 witness. And
16 with me is my partner, or my associate, Doug Fogle.

17 MR. GRAVER: And good afternoon, Your Honor, Chris
18 Graver with Keller Rohrback appearing on behalf of Bryan
19 Jaeger.

20 THE COURT: Okay. The questions is whether I have
21 time for you right now. Usually when we have things that
22 are contested, we take a lot of argument. They don't get
23 put on -- they don't stay on the Chapter 11 calendar for
24 obvious reasons.

25 There's a hearing on creditor Thea Francesca

1 D'Adamo's Contested Omnibus Motion for 2004 Exam Pursuant to
2 Federal Bankruptcy Procedure 2004. Service was timely and
3 proper. Last Friday PTR, Inc., one of the parties who
4 movant seeks to examine filed an objection to the objection
5 to the motion. On February 5th, 2024, Debtor filed a letter
6 of no objection to the motion. Okay, let me go through and
7 divide this up.

8 Movant is Debtor's -- movant is Debtor's sister
9 and former member of Debtor's trading firm DePaola Trading.
10 Movant has filed proof of claim for \$1,884,572.50. Movant
11 seeks an order pursuant to Rule 2004 directing the witness
12 Mr. DePaola to appear for examination and to produce
13 documents related to Debtor's former business
14 (indiscernible) include a proposed (indiscernible) of
15 exhibits.

16 Movant states that Debtor was "one of the most
17 successful option brokers on Wallstreet," and was the sole
18 owner of DePaola Trading, Inc., a brokerage firm on the AMEX
19 New York Stock Exchange floor. Bear with me a second.
20 Hange on a second. Okay.

21 The motion to dismiss or convert has been
22 adjourned to March 19th, Mr. Sussman?

23 MR. SUSSMAN: Um --

24 THE COURT: I had other matters on today. I had
25 status, the motion to dismiss, the motion to extend

1 inclusivity. I had three matters on today, which are now
2 stricken. This is left and I'm just kind of not quite sure
3 why everything else is adjourned and why this is left. I
4 mean I -- if somebody will help me out here with this but --

5 MR. GOLDSTEIN: If I may, Your Honor, Scott
6 Goldstein for the Debtor.

7 THE COURT: Yeah.

8 MR. GOLDSTEIN: Your Honor, the other matters were
9 adjourned at my request. I was not actually (indiscernible)
10 I would have internet connection to get in today. My office
11 just moved yesterday. The blur is because I don't want
12 anyone to see how bad it looks in here at this time. But
13 the Office of the U.S. Trustee was kind enough to agree to
14 adjourn everything as the motion to extend time is my
15 motion. So, we adjourned everything except for this, which
16 is Mr. Conway's, and he indicated that he wanted to proceed.

17 THE COURT: Well, Mr. Sussman, if you know -- I
18 mean, whatever -- I'm not getting to it now, but if you know
19 what the grounds for your -- grounds for the motion, have
20 they been cured?

21 MR. GOLDSTEIN: Your Honor, if I may?

22 THE COURT: No, Mr. -- no, let me -- I'm asking
23 Mr. Sussman, the movant.

24 MR. GOLDSTEIN: Okay.

25 MR. SUSSMAN: Your Honor, I'm -- to be honest, I'm

1 not the lead attorney for this case, I'm not quite sure what
2 is going on. I think there was a request to adjourn that we
3 consented to, but it wasn't agreed to by all parties.

4 THE COURT: All right. Mr. Goldstein, give it a
5 try.

6 MR. GOLDSTEIN: Very quickly. The Debtor -- there
7 are three grounds on the U.S. Trustee's motion to dismiss.
8 One was -- one was U.S. Trustee fees; those have been paid
9 up to date. Another was lack of insurance proof. We
10 provided that to the Office of U.S. Trustee. We filed one
11 operating report, and the others are in process right now.
12 So, we are making progress on that.

13 THE COURT: All right.

14 MR. GOLDSTEIN: Requested (indiscernible) to
15 adjourn and she consented.

16 THE COURT: Okay. All right, let me continue.
17 Movant states the Debtor, "was one of the most successful
18 options brokers on Wallstreet," was the sole owner of
19 DePaola Trading, Inc, a brokerage firm on the AMEX New York
20 Stock Exchange floor. Debtor had a large broker business,
21 (indiscernible) operating.

22 Movant begins by raising that despite earning,
23 "tens of millions of dollars," and paying for a \$6 million
24 home in full, the Debtor has claimed he only has one bank
25 account holding \$40,000 and that he has not been paid since

1 the petition date by his employer, meaning no income in
2 2023.

3 Movant asserts on information and belief Debtor
4 has improperly transferred and/or (indiscernible) assets
5 from the Court and its creditors. Movant states the
6 Debtor's entire team of brokers is now employed by PTR,
7 Inc., a different options trading firm, asserting that the
8 brokers still use the same office space paid for by the
9 Debtor, service the same book of business, and yet Debtor
10 says he has no right to receive a share of the new revenue
11 and is content to simply allow these millions of dollars in
12 revenue to be retained by PTR.

13 Debtor's firm specialized in executing orders of
14 options, securities traded on the AMEX New York Stock
15 Exchange from 2003 until ceasing business operations in 2023
16 which the movant states was voluntary on the part of the
17 Debtor. Movant alleges that throughout that time Debtor
18 paid himself "millions of dollars."

19 All right, all right. So, this is easy-peasy with
20 respect to the Debtor. Right? You're seeking to examine
21 the Debtor, correct?

22 MR. CONWAY: Your Honor, Michael Conway for Ms.
23 D'Adamo. Yes, we've actually asked for subpoenas to be
24 issued with respect to 10 parties, nine of which --

25 THE COURT: But what -- I'm asking you about the

1 Debtor?

2 MR. CONWAY: The Debtor --

3 THE COURT: Okay.

4 MR. CONWAY: The Debtor --

5 THE COURT: The Debtor is easy -- the Debtor is
6 easy-peasy.

7 MR. CONWAY: Yeah, it --

8 THE COURT: The Debtor is granted. Okay? Now,
9 let's see what else because I have opposition, which again
10 may not be something that I can just handle in a few
11 minutes. So, bear with me. Okay. This is all about the
12 Debtor. Okay, now we get to this. Okay.

13 So, your client went to arbitration, correct? And
14 which resulted in a final award in December of 2022. Your
15 motion said 2023, but we assumed it was 2022.

16 MR. CONWAY: I saw that today, Your Honor,
17 mistake, thanks.

18 THE COURT: All right. I verified the award in
19 Exhibit G was in favor of movant for \$1.25 million in
20 consent to compensatory damages and about \$600,000 in
21 attorney's fees. And the firm had to expunge defamatory
22 statements. Okay. So, that just -- but that was awarded
23 solely as against the Debtor.

24 MR. CONWAY: No, it was awarded against the Debtor
25 and a DePaola Trading jointly and severally.

1 THE COURT: Okay. And DePaola Trading is also
2 somebody you're seeking an examination of?

3 MR. CONWAY: Yes.

4 THE COURT: Okay. And that was the Debtor's
5 company?

6 MR. CONWAY: It was, Your Honor.

7 THE COURT: Okay. Is there anybody appearing on
8 behalf of DePaola Trading to object? Okay. Also, easy-
9 peasy. Granted as to DePaola Trading.

10 Okay. Now, Debtor and DePaola allege that the
11 (indiscernible) is paying the final award, meaning it could
12 not satisfy that capital requirement which then led FINRA
13 scheduling the firm for a hearing on its net capital
14 violations for 2/26/23.

15 However rather than attend the hearing, the firm
16 canceled the hearing on 2/24/23, involuntarily ceased doing
17 business that same day. All of the firm's options, brokers
18 except for Debtor, became registered with a competing
19 options floor broker, PTR, Inc., and continued doing
20 identical business to that carried out at DePaola Trading.
21 Movant notes the suspicious nature of the firm's employees
22 all moving en masse to the same firm rather than seeking out
23 positions at a myriad of other firms.

24 Movant states thus that on information and belief
25 the transfer of all employees from DePaola Trading to PTR

1 was preplanned to frustrate the final award and Debtor's
2 others creditors. Movant states that PTR also hired DePaola
3 Trading former chief administrative officer, the firm's
4 outside accountant, and the firm's financial and operational
5 principal, all of whom were non-producing employees even
6 though PTR already had its own billing, accounting, and
7 compliance personnel.

8 Movant also alleges on information and belief the
9 Debtor has represented a third parties that although he and
10 the firm can no longer operate, they are still carrying out
11 business as usual through PTR and that DePaola Trading's
12 former employees are carrying out their work with PTR using
13 DePaola Trading's workspace on the exchange floor and
14 computer equipment.

15 Okay. So, we have, I assume, allegations of
16 fraudulent conveyance or tortious interference, or again,
17 assets moving out for free, another way of saying. Is that
18 where we're going here in part?

19 MR. CONWAY: It is, Your Honor.

20 THE COURT: Okay. Good, okay. In March 2023,
21 movant made multiple demands for information from PTR
22 explaining the circumstances surrounding the transition of
23 DePaola Trading's employees or any agreements between PTR
24 and Debtor. PTR has allegedly refused to provide any
25 information. On March 24th, 2023, DePaola Trading opposed

1 movant's petition to confirm and moved to vacate the final
2 award.

3 In the meantime, Debtor was allegedly hired by
4 Dinosaur Financial Group, LLC as a floor broker on the
5 exchange floor to do essentially the same work as he carried
6 out at DePaola, and movant points out that despite this
7 employment Debtor's Schedule J report his only compensation
8 from Dinosaur was 100 -- which I think was 100,000. But
9 again, that's as to the Debtor.

10 Movant also states that according to Debtor's
11 broker check reported on FINRA, Debtor's registration with
12 Dinosaur Financial terminated as of August 2023, yet Debtor
13 did not advise the U.S. Trustee or counsel at the 341
14 meeting that his employment with Dinosaur had ended.

15 Is the Debtor, Mr. Goldstein, is the Debtor
16 currently employed?

17 MR. GOLDSTEIN: Yes, Your Honor, with Dinosaur.
18 I'm not sure why -- what -- why the broker check shows that,
19 but he's still working for Dinosaur.

20 THE COURT: Okay, thank you. Okay. So, DePaola
21 Trading did not file a petition, right, so there's no -- but
22 the state court -- the state court stayed everything?

23 MR. CONWAY: The state court --

24 THE COURT: (Indiscernible) speak.

25 MR. CONWAY: Michael Conway again for Ms. D'Adamo.

1 The state court is -- has been asked to confirm the award.
2 We pointed out to the state court that there was no stay as
3 to DePaola Trading, but the state court did not respond in
4 one way or the other.

5 THE COURT: All right. Well, if they -- if they
6 still see it, I mean, if you can't get anywhere with them,
7 you could -- I guess you can do something by way of a
8 (indiscernible) order with me because they're not a Debtor
9 at this point.

10 Okay. Movant asserts that it is established above
11 -- well, nothing's been established, but that the real
12 allegation is that the Debtor's been secreting and
13 concealing assets in order to avoid creditors to pay the
14 final award. Okay, I got all that.

15 Okay. So, the motion with respect to examining
16 the Debtor is granted. The motion with respect to examining
17 DePaola Trading, Inc., is granted.

18 Anybody object on behalf of the wife? Mr.
19 Goldstein?

20 MR. GOLDSTEIN: No, Your Honor.

21 THE COURT: Granted as to the wife.

22 Okay, Angela Grigoli, Debtor's sister-in-law, and
23 former chief administrative officer of DePaola Trading.
24 Upon information and belief, Ms. Grigoli performed billing
25 services to PTR after DePaola Trading shut down. Movant

1 believes Grigoli will have all of the above information
2 enumerated for Lorana and additionally the registration of
3 the DePaola Trading employees of PTR from February 2024 and
4 Debtor's employment with Dinosaur Financial. Is anybody
5 objecting on behalf of Angela Grigoli?

6 MR. GOLDSTEIN: Your Honor, Scott Goldstein for
7 the Debtor. I haven't received or seen any objection to
8 that.

9 THE COURT: Granted, 2004 is granted.

10 PTR, Inc. This is the firm to which all of
11 DePaola Trading employees migrated. They filed the
12 objection. Movant believes PTR will have information
13 relating to voluntary cessation of DePaola Trading,
14 registration of the former employees at PTR, business
15 conducted, and revenues generated through February of 2024,
16 client services by PTR through February 2024, and the
17 agreement between PTR and Debtor with DePaola Trading, any
18 payments from PTR to Debtor, and/or any individual or entity
19 on Debtor's behalf, and Debtor's employment at Dinosaur.
20 All right. Let's skip that one for a minute.

21 Dinosaur Financial Group, Debtor's employer,
22 following cessation of DePaola Trading operations movant
23 believes Dinosaur has documented info related to voluntary
24 cessation of DePaola Trading, registration of the former
25 employees at PTR, Debtor's employment at Dinosaur and

1 compensation. Well, why aren't you going to be able to get
2 that elsewhere?

3 MR. CONWAY: Your Honor, Michael Conway. Again,
4 Dinosaur has apparently a unique relationship with Mr.
5 DePaola. Mr. DePaola testified in his 341 Meeting that
6 while he's sitting in a chair, Dinosaur -- he has no
7 agreement with them and they haven't paid him, but he
8 generated revenues. We don't know where those revenues are,
9 but they're either sitting with Dinosaur or there's an
10 agreement they're going to PTR. But the bottom line is that
11 any work he's doing at Dinosaur will show, from what we
12 heard at 341, what compensation he's owed and is not being
13 paid. And we believe because of the relationship that
14 Dinosaur may have information relating to the PTR issue.
15 But bottom line is we know for a fact based on the 341 that
16 Dinosaur owes money to the estate.

17 THE COURT: Why?

18 MR. CONWAY: Well, according to the Debtor, he's
19 been working there but not -- and he's generated revenues
20 for them, he thinks that at least as the (indiscernible) the
21 prior 341 Meeting that he was owed 100,000, but he can't --

22 THE COURT: Let me check, I just want to check
23 with my staff. We checked service as to Dinosaur, service
24 was good.

25 MR. CONWAY: Yes, it was good and --

1 THE COURT: No, no, no, I'm asking my staff, Will?

2 Dinosaur was served at their main headquarters. Will?

3 You're on mute, Will, or you're -- unless you're checking.

4 WILL: Can you hear me now?

5 THE COURT: Yeah, now I can hear you.

6 WILL: Judge, yes, sorry, they were served, yeah,
7 at their headquarters, Dinosaur --

8 THE COURT: At their headquarters, okay, all
9 right. All right, TD Bank, movant -- so, granted as to
10 Dinosaur.

11 TD Bank. Movant believes TD has documented info
12 related to Debtor's bank accounts with the bank and Debtor's
13 application for the home equity line of credit. Okay,
14 granted.

15 American Express. Movant believes AMEX has
16 documents (indiscernible) related to Debtor's account
17 including account statements and payments made by the
18 Debtor. Okay, that's granted. Citibank is granted. You
19 may want to do this in steps, but.

20 Robinhood. Debtor has a Robinwood account which
21 he has listed as one of his assets in the bankruptcy case.
22 Movant believes Robinhood has documented info related to
23 Debtor's account including account statements. Granted.

24 Creative Plan Design Limited. Movant believes
25 Creative Plan Design has documented info related to the

1 DePaola Trading profit-sharing plan and payments made by
2 Peter and/or the firm to the plan. Tell me more about this.

3 MR. CONWAY: Your Honor, Michael Conway again.
4 Another issue that came up in the 341, and something that we
5 had already investigated was that Mr. DePaola was paid --
6 well, the entire profit-sharing plan for all employees was
7 closed and monies were distributed, and his account value
8 was somewhere in the neighborhood of \$400,000, maybe more.
9 We don't know for sure because our data was stale.

10 But the fact was it was liquidated, and we need to
11 see how much of it was sent to Mr. DePaola and should have
12 been transferred --

13 THE COURT: But what if -- what is Creative Plan
14 Unlimited, what is it?

15 MR. CONWAY: It's the entity that was
16 administering the profit-sharing plan.

17 MS. SMOKE: Your Honor, this is Laura Smoke. I'm
18 sitting in for Creative Plan Designs. I was in --

19 THE COURT: Well, when you say -- wait a minute,
20 you're sitting in -- who -- are you an attorney representing
21 them or are you just from the company?

22 MS. SMOKE: No, I'm from the company.

23 THE COURT: Okay.

24 MS. SMOKE: So, would you like me to add color to
25 this or?

1 THE COURT: No, I -- you can't. Again, the
2 question you -- do you have any objection to the 2004 exam
3 and the document request with respect to the -- your
4 company?

5 MS. SMOKE: I have -- no.

6 THE COURT: Okay, granted. All right. I don't
7 need color; I just need to move on.

8 Okay. PTR's objection. PTR argues that movant
9 assertion that Debtor, "voluntarily" ceased DePaola's
10 trading operation is not entirely true with the FINRA
11 hearing schedule considering DePaola Trading's potential net
12 capital violations, DePaola Trading choice to shut down was
13 a little more than a determination that it would lose at the
14 hearing and FINRA would suspend its operations, meaning that
15 Debtor did not have -- well, it sounds to me -- okay, it
16 sounds to me like you got information just by what you just
17 said to me.

18 PTR also states that movant's assertion that the
19 transfer of all employees was preplanned is false. Again,
20 this is why they need to talk to you. PTR also raises the
21 fact that it has extensive correspondence in response to
22 movant's request for information which it provides in
23 Exhibits A through G and (indiscernible) to provide PTR
24 (indiscernible) -- I don't believe that they have been shown
25 good cause as to PTR. PTR is pivotal here -- to much of the

1 information with respect to this Debtor and what 2004
2 allows.

3 Again, your testimony -- your objection is in the
4 way of testimony, that I don't take testimony like that.
5 Testify to them not to me.

6 Now, the only thing I want to get to is your
7 sensitive business information. Let me see what you say
8 about that, but as to the other I'm going to overrule it.

9 PTR asserts that movant now works for one of PTR's
10 competitors. Well, I guess she had to work somewhere.
11 Movant could use the identities and rates of its clients to
12 poach their clients and undercut PTR's rates. Well, wait a
13 minute, you are allegedly concerned about something that
14 they're accusing you of doing, right?

15 MR. DICE: Well, Your Honor, if I may.

16 THE COURT: State your name, say your name.

17 MR. DICE: Denis Dice for PTR. You know going
18 back, Your Honor, we asked them multiple times last summer
19 in my letters whether or not they had any evidence
20 whatsoever to establish or support their claim.

21 THE COURT: No, no, they're looking for evidence.
22 They have a right to look for evidence.

23 MR. DICE: Well, there is none. My client -- my
24 clients and I --

25 THE COURT: Again, that's not -- Mr. -- is it Mr.

1 Dice?

2 MR. DICE: It is.

3 THE COURT: Mr. Dice, that's it, that's the end of
4 this. I think that Mr. DePaola can get his discharge, we
5 can move on, we can close this case because you said there's
6 no evidence. Thank you, I wish my job could be that easy
7 every day.

8 MR. DICE: Well --

9 THE COURT: Just because you say there's no
10 evidence doesn't mean anything to me. The fact that you're
11 objecting means something to me, but the fact that you say
12 there's no evidence they have a right -- did you read Rule
13 2004? They have a right to -- let's read it again, let's
14 read it together. It's a fishing expedition, and they have
15 a right to fish in your (indiscernible) based upon what I
16 know and based upon the things that's in your response which
17 is basically you testifying.

18 So, again, here's the way this works. If -- I'm
19 going to grant their motion for 2004 and the subpoena, and
20 if you need -- if you need with respect to a specific item,
21 you feel you need a protective order, you will put in if you
22 think there's a -- you have again a -- there's a privilege
23 or you feel that you need a protective order, you'll come
24 back to me and you'll seek a protective order, right?

25 MR. DICE: Yes, Your Honor, I mean she is a direct

1 competitor so yeah there is an ulterior motive.

2 THE COURT: Well, I guess she is because she had
3 to go get a job somewhere, right?

4 MR. DICE: Well, Your Honor, her brother got hit
5 with the big award, so he had to shut down his business.

6 So, I mean, she can't use this as a subterfuge to go and my
7 client's proprietary confidential information. And I --

8 THE COURT: I don't -- but again, I don't see how
9 it's a subterfuge. She's trying to figure exactly what
10 you're alleging she's trying to do, right? So, let's go
11 over it. PTR lists many of the documents which movant has
12 included in its proposed subpoena such as client accounts,
13 transfers of DePaola Trading to PTR. That would be fair
14 game. Communications between PTR and such clients, trading
15 or business with such clients, documents identifying PTR
16 clients prior to. Okay.

17 Well, again, you don't need anything pertaining to
18 PTR's clients prior to DePaola moving over there. Correct,
19 Mr. Conway, can we -- can we limit that, please?

20 MR. CONWAY: Yes, we're -- Your Honor, Michael
21 Conway. We're asking about the clients, and we already have
22 the list of clients, it's not like they're a secret. You
23 know, there's no poaching going on. There's a limit of
24 clients and the clients typically use multiple brokers for
25 this, but -- and we know who they are.

1 You know, we're interested in what the revenues
2 were from DePaola Trading for which historically Mr. DePaola
3 would pay himself \$3 to \$4 million a year and now he's
4 destitute. So, we want to know what those customers are
5 bringing in.

6 THE COURT: So, you're limiting your examination.
7 One, you want to know everybody who was DePaola's client
8 that's now their client and the revenue.

9 MR. CONWAY: Yeah, and the communications and --

10 THE COURT: But if somebody was their client
11 before DePaola Trading or Mr. DePaola went over there, then
12 you are not looking for that or you shouldn't be now.

13 MR. CONWAY: Michael Conway again. There's a
14 little caveat there. The way it usually works is that there
15 are multiple trading desks for each one of these folks and
16 the trading desks are the relationships. So, for instance,
17 a customer might be -- might be giving business to both Ms.
18 D'Adamo, our client, Mr. DePaola, and to PTR. But different
19 trading desks will send business to different places.

20 So, we're only interested in the client
21 relationships that existed with DePaola Trading, not any --
22 there may be some overlap that they were already doing
23 business with that customer, but the brokerage work that was
24 being done by these floor traders that came over from
25 DePaola Trading will only be done to the best of my

1 knowledge on behalf of the trading desk party at the
2 customer that DePaola Trading was using -- was doing
3 business for.

4 So, there's a possibility. I'm not sure that
5 there were any overlapping customers, but there's a
6 possibility that PTR had a customer that had a trading desk
7 employee sending work over and it's the same customer that
8 had trading desks employees sending work to DePaola Trading.
9 So, in that instance obviously we (indiscernible) the
10 revenues generated by that trading desk relationship would
11 still be something we're looking for.

12 So, it's not as -- it's not so easy to say that
13 the customer -- and it may be that easy, I don't know
14 because PTR hasn't given us any information. But it may be
15 that -- it may be that none of the customers overlap. But
16 in the event that they do overlap we would ask that we still
17 are entitled to revenues relating to the work being done by
18 the former DePaola -- the former DePaola floor brokers on
19 behalf of the existing DePaola Trading customers.

20 THE COURT: Mr. Dice?

21 MR. DICE: Your Honor, they've already said that
22 Mr. DePaola works at a different firm right now. So, to the
23 extent that these clients have decided to go to PTR, I mean,
24 that's completely up to them. Mr. DePaola has nothing --

25 THE COURT: Mr. Dice, this is not an argument on

1 that basis. Again, they have a right to do the 2004. The
2 only question is that they are -- they don't have a right
3 without a greater showing to obtain confidential and
4 proprietary trade information.

5 MR. DICE: And Your Honor, Denis Dice, I'm sorry.
6 My client's position, Your Honor, is that he is in direct
7 competition with these people, and he does not want to get
8 into his rates, his commission schedules, or the name of his
9 clients. I mean, these are third party --

10 THE COURT: Okay, but I'm not asking -- I mean,
11 we're not talking about that. We're talking about -- we're
12 talking about looking at DePaola Trading's former employees
13 and the work they're doing with respect to clients that were
14 not your clients prior to them coming over, right?

15 MR. DICE: Right.

16 THE COURT: We're not talking about your clients
17 now. We're talking about the clients that DePaola Trading's
18 former employees are working on. And I don't think you need
19 to disclose rates.

20 MR. CONWAY: Thank you.

21 MR. DICE: Your Honor, it's Denis Dice again for
22 PTR. I would just like to point out that these clients are
23 not exclusive to a certain brokerage or options trading
24 firm. You know, there are, I believe, there are --

25 THE COURT: Yeah, I mean, he just said that I

1 understand that. But just because you got clients doesn't
2 mean he stole it, I get that.

3 MR. DICE: No, no, I just think that multiple
4 clients may do work with, you know, multiple firms at the
5 same time, so there --

6 THE COURT: Right.

7 MR. DICE: Right.

8 THE COURT: Right. So, again, if you're not
9 disclosing your rates, you don't have to worry about the
10 movant, right? Because the movant could have some -- many
11 of the same clients, correct, based upon that same argument?

12 MR. DICE: That's my understanding. I don't know
13 to what extent, but I believe there would be some.

14 THE COURT: Okay. You filed this objection late
15 to begin with I'll point out. So, let us figure out a way
16 that -- again, that I'm going to grant 2004 as to PTR, not
17 as to rates and client -- and the other information you're
18 seeking is fine, but client information, you know, it could
19 be (indiscernible) former employers. But client
20 information, again, only with respect to clients that
21 DePaola Trading former employees were over, accounts they
22 brought over regardless of whether you also have that
23 account. Is that correct?

24 MR. DICE: Your Honor, Denis Dice again. This is
25 a situation where there are no client accounts, it's not

1 like your typical brokerage firm. So, what it is, is they
2 have maybe a relationship with an options trading firm, and
3 they just direct the trades to the options trade. So,
4 there's no "client" account per se. It's just I want to use
5 PTR for this trade, I want to use Dinosaur for that trade.
6 So, it's a very fluid situation.

7 So, there's no client accounts that were brought
8 over so to speak. Some clients may have developed a
9 relationship with PTR as a result of a DePaola employee that
10 came.

11 THE COURT: Yeah, yeah, the stuff that flowed from
12 the DePaola Trading employees is what we're talking about.
13 If you need a protective order, you make the motion, and
14 I'll hear it.

15 MR. DICE: Okay, thank you.

16 THE COURT: But otherwise, I'm otherwise, again,
17 Mr. Conway, do you understand the limitation I'm putting on
18 you? No rates and not information that precedes the time
19 that the employees came over.

20 MR. CONWAY: Yes, Your Honor, I get it, and I'll
21 try and work that into the final version of the subpoena.
22 And just so Your Honor's aware, we don't care about rates
23 with the way it works in this business is they just give a
24 reduced commission based on a rebate they get from the
25 exchange and they -- the customers, savvy customers know

1 about this, and they ask for a rebate. And the amount of
2 the rebate might garner loyalty.

3 We don't care about that; we just want to know
4 what revenues should have been paid to Mr. DePaola here. We
5 don't care about rebates or customer rates as they put it.
6 So, I'll make it clear that we're not interested in what
7 goes into making that sausage, we just want to see the --

8 THE COURT: All right. But what's your theory --
9 what's your theory here about how this comes back to
10 DePaola, DePaola Trading?

11 MR. CONWAY: DePaola is the person with the
12 relationship for every one of these customers.

13 THE COURT: Right.

14 MR. CONWAY: None of these floor brokers had a
15 relationship with these customers. He testified as much at
16 the arbitration. And when they shut down the business he
17 could have gone with PTR, but he didn't he went to -- he
18 went to Dinosaur to make zero dollars where he was making \$4
19 -- \$3 to \$4 million a year with these customers before that.
20 Where's that \$3 to \$4 million going? Did he just
21 voluntarily give it to Mr. Dice's client. No, he did not do
22 that. We know that that didn't happen. So --

23 THE COURT: And you think there's some way he or
24 somebody related to him continues to be compensated for that
25 old connection?

1 MR. CONWAY: That's correct, Your Honor, and we
2 believe there's probably correspondence out there where they
3 explain to various people including the floor brokers what's
4 really going on here and maybe telling the customers what's
5 really going on here. You know, don't worry, Peter's still
6 your guy because he's your relationship, but send all your
7 business to us now, that sort of a thing. We believe that
8 stuff's out there. So, between the revenues and the
9 communications that's what we really want.

10 THE COURT: Well, let's assume -- well, they have
11 -- again, but you're -- that would -- it would require some
12 kind of remuneration coming back because otherwise I'm
13 assuming you (indiscernible) business based upon the way you
14 described to me that (indiscernible) you know, if he goes
15 out of business his clients are fair game.

16 MR. CONWAY: If he -- well, let's put it this way,
17 he didn't have to go out of business. He did it voluntarily
18 and then moved everybody else --

19 THE COURT: Well, nobody has to go out of
20 business, but he has a right to go out of business. Go
21 ahead.

22 MR. CONWAY: Yeah, 80 cents of every dollar that
23 they brought in went into his pocket. And then when --

24 THE COURT: No, no, no, you can't argue -- you
25 can't, again, you're not --

1 MR. CONWAY: I'm not arguing facts, I'm just
2 suggesting --

3 THE COURT: I'm asking you -- I'm asking you why
4 doesn't anybody have a right to go wherever they want once
5 he's no longer doing their work for them?

6 MR. CONWAY: Michael Conway, again. Your Honor,
7 if that were -- if it were as simple as that you'd be right,
8 but since we believe that the ultimate goal here is for him
9 to recover all the money that he was making before --

10 THE COURT: Okay. So, you based upon a theory of
11 somehow or other, there are undisclosed assets or income.

12 MR. CONWAY: Undisclosed assets, income being
13 parked some place or being paid to an LLC --

14 THE COURT: Which is why -- which is why -- this
15 is why, Mr. Dice, they're entitled to it within that scope.

16 MR. DICE: And Your Honor, I would just say there
17 has to be, you know, according to the case law some good
18 cause for that. Mr. DePaola deny -- they deny that he's
19 getting any income when you look at their application. My
20 client saw that --

21 THE COURT: Yeah, but you know that it has -- it
22 has to be good cause under Rule 11 before they bring an
23 adversary proceeding. 2004 is much broader than that.

24 MR. DICE: Well --

25 THE COURT: If you feel that they're asking for

1 something and insist on something, once you tell them you
2 believe it's confidential and proprietary, if they insist on
3 it, make a motion for protective order and we'll take them
4 up item by item. I can't do this in a vacuum. What I can
5 do in a vacuum is determine that your client is somebody
6 they can pursue in a 2004 venue, determining whether or not
7 something they ask for is beyond what they're entitled to,
8 you can come in and (indiscernible) for a protective order,
9 okay?

10 MR. DICE: Thank you, Your Honor. Just so I'm
11 clear, I mean, basically, it's going to be the total but not
12 how you get to the total in terms of rate schedules,
13 commissions, what they charge, all their internal you know.

14 THE COURT: No, they're going to be asking you
15 whether any funds or -- you know, are going out to DePaola
16 is what they're going to be asking you. And they'll want to
17 see what the former employees are up to. Your current
18 employees --

19 MR. DICE: That'll --

20 THE COURT: -- with respect to nothing that
21 occurred before they got there, but with respect to what
22 occurred after they got there, but not rates. Okay?

23 MR. DICE: Okay, thank you.

24 THE COURT: Okay, so the motion is granted as per
25 the record. Upload an order.

1 MR. CONWAY: Thank you, Your Honor.

2 (Whereupon these proceedings were concluded at

3 3:04 PM)

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1 C E R T I F I C A T I O N

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3 I, Rita Weltsch, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

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8 Rita Weltsch

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25 Date: February 27, 2024

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